

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID TORREZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-00671-CDB (SS)

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT'S CROSS-
MOTION FOR SUMMARY JUDGMENT

(Docs. 24, 26)

Plaintiff David Torrez ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying his application for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the Administrative Record ("AR") and the parties' briefs, which were submitted without oral argument. (Docs. 24, 26, 27).¹

I. BACKGROUND

A. Administrative Proceedings and ALJ's Decision

On June 24, 2015, Plaintiff filed an application for Title XVI Supplemental Security Income ("SSI") and Title II Social Security Disability Insurance ("SSDI") benefits, alleging a

¹ Both parties have consented to the jurisdiction of a magistrate judge for all proceedings in this action, in accordance with 28 U.S.C. § 636(c)(1). (Doc. 11).

1 period of disability beginning November 3, 2011. (AR 22; 372-375). On August 12, 2015, his
2 claim was denied. (AR 241-244). It was again denied upon reconsideration on September 10,
3 2015. (AR 199, 246-250). On October 15, 2015, Plaintiff requested a hearing before an
4 Administrative Law Judge (“ALJ”). (AR 251-252). On September 5, 2017, Plaintiff appeared at
5 the hearing before the assigned ALJ, John Trunick. The ALJ issued an unfavorable decision on
6 February 22, 2018. (AR 203-221). Plaintiff timely appealed to the Appeals Council (“AC”) and
7 the AC remanded the case for a new decision to be adjudicated from November 3, 2011, the date
8 of onset of Plaintiff’s alleged disability. (AR 222-224).

9 After additional testimony from Plaintiff during a hearing on January 30, 2020, ALJ Shiva
10 Bozarth issued an unfavorable decision on April 15, 2020. (AR 16-36). Afterwards, the AC
11 denied review (AR 10-15) and Plaintiff filed the instant action.

12 After reviewing the evidence, the ALJ considered Plaintiff’s claims using the five-step
13 sequential evaluation required by 20 CFR § 404.1520(a)(4). At step one, the ALJ found that
14 Plaintiff had not engaged in substantial gainful activity since the alleged date of disability. At
15 step two, the ALJ found that Plaintiff had the following severe impairments: degenerative disc
16 disease; obesity; diabetes mellitus; diabetic neuropathy; depression; and anxiety. He also
17 determined that Plaintiff had further functional difficulties resulting from hypertension. He found
18 no evidence in the file that hypertension caused more than minimal functional limitations and
19 was, therefore, non-severe, stating that Plaintiff takes medication for the condition which is
20 effective, providing the example that an examination of the cardiovascular system was generally
21 unremarkable. The ALJ stated that he considered all of Plaintiff’s medically determinable
22 impairments when assessing his residual functional capacity (“RFC”). (AR 22).

23 At step three, the ALJ determined that none of the impairments, nor a combination of any
24 of them, is of a severity to meet or medically equal the criteria of an impairment listing in CFR
25 Part 303, Subpart P, Appendix 1. *Id.* The ALJ then provides that he utilized the “paragraph B”
26 criteria² in determining that Plaintiff’s mental impairments did not, singly or in combination, meet

27 ² The “paragraph B criteria” evaluates mental impairments in the context of four broad areas of
28 functioning: (1) understanding, remembering, or applying information; (2) interacting with others; (3)
concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself. 20 C.F.R. § Pt. 404,

1 or medically equal the criteria of listings 12.04 and 12.06. The ALJ found that Plaintiff has no
 2 limitation in his ability to understand, remember, or apply information, a “moderate” limitation in
 3 the ability to interact with others, no limitation in the ability to concentrate, persist, or maintain
 4 pace, and a “moderate” limitation in the ability to adapt or manage himself. He stated that these
 5 findings are consistent with medical and other evidence, providing the example that treatment
 6 reports showed Plaintiff was “alert and cooperative with a normal mood and affect and a normal
 7 attention span and concentration,” with citation to exhibits B1F and B16F. (AR 23).

8 He stated the findings were consistent with an additional report which “which showed that
 9 when complaint [sic] with medication, he is stable and feels good,” with citation to exhibit B19F.
 10 He further provided that the findings are consistent with Plaintiff’s report that he does “not need
 11 help with bathing, dressing, and grooming and he has adequate motivation for them,” with
 12 citation to exhibit B13F. Finally, he noted that the “moderate” limitation in the ability to interact
 13 with others is consistent with Plaintiff’s anxiety, and the “moderate” limitation the ability to adapt
 14 or manage himself is consistent with Plaintiff’s “social anxiety, hypervigilance, and un-cued
 15 panic attacks,” with citation to exhibit B13F. He concludes that, as the mental impairments do
 16 not cause at least two “marked” limitations or one “extreme” limitation, the “paragraph B”
 17 criteria are not satisfied. (AR 23).

18 The ALJ then considered the “paragraph C” criteria. “Paragraph C,” subsection (1)
 19 requires a “highly structured setting that is ongoing that diminishes the signs and symptoms of
 20 [Plaintiff’s] mental disorder.” 20 C.F.R. Pt. 404, subpt. P, app. 1 § 12.04(C)(1). The ALJ found
 21 that “paragraph C” criteria were not satisfied, as there is no evidence Plaintiff relies upon ongoing
 22 “medical treatment, mental health therapy, psychosocial support, or a highly structured setting to

23 Subpt. P, App. 1. The severity of the limitation a claimant has in each of the four areas of functioning is
 24 identified as either “no limitation,” “mild,” “moderate,” “marked,” or “extreme.” *Id.* To satisfy the
 25 paragraph B criteria, a claimant must have an “extreme” limitation in at least one of the areas of mental
 26 functioning, or a “marked” limitation in at least two of the areas of mental functioning. *Id.* An “extreme”
 27 limitation is the inability to function independently, appropriately, or effectively, and on a sustained
 28 basis. *Id.* A “marked” limitation is a seriously limited ability to function independently, appropriately, or
 effectively, and on a sustained basis. *Id.* A “moderate” degree of mental limitation means that functioning
 in this area independently, appropriately, effectively, and on a sustained basis is “fair.” *Id.* And a “mild”
 degree of mental limitation means that functioning in this area independently, appropriately, effectively,
 and on a sustained basis is “slightly limited.” *Id.* See *Carlos v. Comm’r of Soc. Sec.*, 1:21-cv-00517-SAB,
 2023 WL 1868870, at *4 n.7 (E.D. Cal. Feb. 9, 2023).

1 diminish the symptoms and signs of his mental disorder.” The ALJ cites to exhibit B12F to
2 support his findings that Plaintiff “cooks, cleans, shops, and performs his own activities of daily
3 living without assistance.” (AR 23).

4 The ALJ then, prior to proceeding to step four, determined the residual functional capacity
5 (“RFC”) for Plaintiff. He found Plaintiff had the capacity to perform work at the “medium
6 exertional level.” He stated as follows:

7 Specifically, he is able to lift and carry 50 pounds occasionally and 25 pounds
8 frequently, stand and walk about six hours, and sit for about six hours total in an
9 eight-hour workday. He is able to frequently balance, stoop, kneel, crouch, crawl,
10 and climb ramps or stairs, but he should never climb ladders or scaffolds. The
11 claimant should never work at unprotected heights or around fast moving
12 machinery and he is limited to frequently reaching overhead with the bilateral upper
extremities. He is also limited to frequently operating foot controls. In addition, the
claimant is limited to only routine work related decision making with occasional
contact with coworkers and the public.

13 AR (24). The ALJ noted that he considered all symptoms and “the extent to which these
14 symptoms can reasonably be accepted as consistent with the objective medical evidence and other
15 evidence,” based on 20 CFR 404.1529 and 416.929, as well as SSR 16-3p. The ALJ explained
16 that he followed the “two-step process” where first he must determine whether there is an
17 underlying medically determinable physical or mental impairment or impairments that could
18 reasonably be expected to produce Plaintiff’s pain or other symptoms and, if so determined, then
19 he must evaluate the intensity, persistence, and limiting effect of Plaintiff’s symptoms. (AR 24).

20 The ALJ then discussed his findings regarding Plaintiff’s physical and mental
21 impairments. (AR 24-28). He found that Plaintiff had a body mass index (“BMI”) over 30 and
22 had been assessed as obese. He noted Plaintiff was also diagnosed with type 2 diabetes mellitus
23 with diabetic peripheral neuropathy, as a report showed diminished sensation to light touch in
24 both hands and feet and took gabapentin for pain. He stated that Plaintiff had no musculoskeletal
25 symptoms and no focal deficits with normal sensation, reflexes, coordination, muscle strength,
26 and tone, with “no evidence of compression neuropathy, polyneuropathy, or ongoing lumbar
27 radiculopathy.” For these findings, the ALJ cited to exhibits B1F, B2F, B3F, B7F, B14E, B14F,
28 B17F, B18F, and B25E. (AR 25).

1 The ALJ noted that examinations of Plaintiff's extremities did not reveal any "clubbing,
2 cyanosis, edema, or deformity with a full range of motion of all joints" as well as "normal
3 coordination, balance, and gait." The ALJ discussed the medical evidence regarding Plaintiff's
4 gait, noting a normal gait, followed by an "unsteady gait" but with full strength in the "bilateral
5 upper and lower extremities," followed by a normal gait, and finally, a "non-antalgic gait with no
6 assistive device" without "deformity or swelling in the extremities with a normal range of
7 motion." The ALJ cited to exhibits B1F, B2F, B7F, B14F, B15F, B16F, and B20F. (AR 25).

8 The ALJ then considered the medical opinion evidence, namely exhibits B12F (the
9 consultative evaluation of physician Robert Wagner), B9F (the state-agency medical consult of
10 physician I. Ocrant), and B6A (the state-agency medical consult of physician A. Nasrabadi). The
11 ALJ gave Dr. Wagner's proscribed limitations significant weight because the opinion was
12 generally consistent and supported by medical and other evidence in the record. The ALJ stated
13 Dr. Wagner's limitations was consistent with Plaintiff's report describing his pain as zero out of
14 ten and with a normal balance, gait, and coordination. The ALJ found the limitations were
15 consistent with Dr. Wagner's examination findings, as well. (AR 25).

16 The ALJ gave little weight to Drs. Ocrant and Nasrabadi's findings, both of whom stated
17 there was insufficient evidence to make a determination as to Plaintiff's RFC. The ALJ reasoned
18 that evidence from the hearing, and the findings of Dr. Wagner, are sufficient to make such a
19 determination. (AR 26).

20 Following his discussion regarding Plaintiff's physical impairments, the ALJ turned to
21 Plaintiff's mental impairments. He noted that Plaintiff reported feelings of sadness and
22 anxiousness and was diagnosed with depression and anxiety. He stated Plaintiff took medication
23 for those conditions, namely Wellbutrin (bupropion) and propranolol which "are effective, as a
24 report indicated [Plaintiff's] condition is stable with medication." He found that the records
25 showed Plaintiff has been "alert and cooperative with a normal mood and affect and a normal
26 attention span and concentration," as well as with an "age appropriate" mental status. The ALJ
27 stated that Plaintiff presented with "adequate concentration, persistence, and pace with
28 appropriate thought content and an intact memory" as well as that, when Plaintiff was compliant

1 with medication, he “reported feeling good.” The ALJ cited to exhibits B1F, B3F, B4F, B13F,
2 B14E, B16F, B19F, and B20F. (AR 26).

3 The ALJ then considered the medical opinion evidence, namely exhibits B13F (the
4 consultative mental evaluation of psychologist Lance A. Portnoff), B4A (the state-agency medical
5 consult of psychologist Cory A. Brown), B10F (the state-agency medical consult of physician A.
6 Garcia), and B6A (the state-agency medical consult of physician G. Ikawa). (AR 26-27).

7 The ALJ gave significant weight to Dr. Portnoff’s proscribed limitations, namely that
8 Plaintiff is able to “perform simple and repetitive tasks,” “has no limitation in his ability to
9 perform detailed and complex ones,” “has mild to moderate limitations in his ability to interact
10 with coworkers and the public,” “has no limitations in his ability to accept instructions from
11 supervisors,” and has “no limitations in his ability to work on a consistent basis without special or
12 additional instruction.” Dr. Portnoff also determined that Plaintiff has “moderate limitations in
13 his ability to complete a normal workday or workweek without interruptions from psychiatric
14 condition” but that he has “no limitations” in regards to regular attendance in the workplace.
15 Finally, Dr. Portnoff found Plaintiff “moderately impaired” as to being able to deal with stress
16 encountered in a “competitive work environment.” (AR 26).

17 The ALJ found Dr. Portnoff’s limitations to be consistent and supported by the record,
18 namely “in light of treatment reports showing [Plaintiff] was alert and cooperative with a normal
19 mood and affect and a normal attention span and concentration,” as well as with a February 2020
20 report showing that, when Plaintiff is compliant with medication, he “is stable and feels good.”
21 The ALJ cites to exhibits B1F, B13F, B16F, and B19F. (AR 26).

22 The ALJ gave “limited weight” to the opinion of Dr. Brown, who found Plaintiff is
23 “capable of performing simple instructions” and could “sustain a work schedule with simple
24 tasks,” and could “deal with supervisors and minimal coworkers, and minimal public contact.”
25 The ALJ stated that Dr. Brown’s opinion is inconsistent with the treatment reports, as described
26 supporting the findings of Dr. Portnoff, and is “over restrictive,” particularly in light of the
27 February 2020 report. The ALJ cites to exhibits B1F, B4A, B16F, and B19F. (AR 27).

28 Both Drs. Garcia and Ikawa found insufficient evidence to make a determination

1 regarding Plaintiff's mental RFC. The ALJ gave "little weight" to both findings, stating that the
2 evidence received during the hearing as well as the report of Dr. Portnoff are sufficient to make a
3 determination regarding Plaintiff's mental RFC. The ALJ cites to exhibits B6A, B9F, B10F, and
4 B13F. (AR 27).

5 The ALJ addressed the third-party function report of Angela Russell, Plaintiff's girlfriend.
6 She stated that Plaintiff's ability to bend is "affected," as his ability to concentrate. The ALJ
7 pointed to Dr. Wagner's report for the proposition that Plaintiff is "easily able to bend at the
8 waist" and to Dr. Portnoff's report for the proposition that Plaintiff demonstrated "adequate
9 concentration, persistence, and pace." The ALJ gave Ms. Russell's function report "little weight"
10 because it is evidence from a non-medical source and contains inconsistent and unsupported
11 statements. The ALJ cites to exhibits B4E, B12F, and B13F. (AR 27).

12 The ALJ determined that Plaintiff's medically determinable impairments could reasonably
13 be expected to cause the alleged symptoms but his statements concerning the intensity,
14 persistence, and limiting effects of those symptoms are not entirely consistent with the medical
15 and other evidence. The ALJ specifically noted the findings of Dr. Wagner as to Plaintiff's
16 ability to bend at the waist and Dr. Portnoff regarding concentration, as well as Plaintiff's own
17 claims regarding his ability to complete tasks. The ALJ cites to exhibits B2E, B3E, B7E, B12F,
18 B13F, and B20E. (AR 27-28).

19 Moving to step four, the ALJ found that Plaintiff had no past relevant work. At step five,
20 the ALJ found that, based on the testimony of the vocational expert, Plaintiff is capable of making
21 a successful adjustment other work that exists in significant numbers in the national economy. He
22 cited packer for agricultural produce, food service worker in a hospital environment, and kitchen
23 helper as representative occupations. He concluded by determining that Plaintiff had not been
24 under a disability from November 3, 2011, to the date of the decision. (AR 28-29).

25 **B. Medical Record and Hearing Testimony**

26 The relevant hearing testimony and medical record were reviewed by the Court and will
27 be referenced below as necessary to this Court's decision.

28 ///

II. STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (*Id.* at 1159) (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." (*Id.*) (quotation and citation omitted). "It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Healy v. Astrue*, 379 Fed. Appx. 643, 645 (9th Cir. 2010). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. (*Id.*).

The court will review only the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205, 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. "The court will uphold the ALJ's conclusion when the evidence is susceptible to more than one rational interpretation." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ's decision on account of an error that is harmless. (*Id.*). An error is harmless where it is "inconsequential to the [ALJ's] ultimate nondisability determination." (*Id.*) (quotation and citation omitted). The party appealing the ALJ's decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

A claimant must satisfy two conditions to be considered "disabled" and eligible for benefits within the meaning of the Social Security Act. First, the claimant must be "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be "of such severity that he is not only

1 unable to do his previous work[,] but cannot, considering his age, education, and work
2 experience, engage in any other kind of substantial gainful work which exists in the national
3 economy.” 42 U.S.C. § 1382c(a)(3)(B).

4 The Commissioner has established a five-step sequential analysis to determine whether a
5 claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the
6 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the
7 claimant is engaged in “substantial gainful activity,” the Commissioner must find that the
8 claimant is not disabled. 20 C.F.R. § 416.920(b).

9 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step
10 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20
11 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of
12 impairments which significantly limits [his or her] physical or mental ability to do basic work
13 activities,” the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s
14 impairment does not satisfy this severity threshold, however, the Commissioner must find that the
15 claimant is not disabled. (*Id.*).

16 At step three, the Commissioner compares the claimant’s impairment to impairments
17 recognized by the Commissioner to be so severe as to preclude a person from engaging in
18 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more
19 severe than one of the enumerated impairments, the Commissioner must find the claimant
20 disabled and award benefits. 20 C.F.R. § 416.920(d).

21 If the severity of the claimant’s impairment does not meet or exceed the severity of the
22 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual
23 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s
24 ability to perform physical and mental work activities on a sustained basis despite his or her
25 limitations (20 C.F.R. § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
26 analysis.

27 At step four, the Commissioner considers whether, in view of the claimant’s RFC, the
28 claimant is capable of performing work that he or she has performed in the past (past relevant

work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education, and past work experience. (*Id.*). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. (*Id.*).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

III. ISSUES AND ANALYSIS

Plaintiff raises two issues in his motion for summary judgment: (1) the ALJ harmfully erred by failing to provide clear and convincing reasons to reject the psychological and physical symptomology evidence of record; and (2) the mental RFC is not supported by substantial evidence. (Doc. 24 at 2).

A. Whether the ALJ Failed to Provide Clear and Convincing Reasons for Discounting Plaintiff's Allegations Regarding Psychological and Physical Symptomology

Plaintiff asserts that the ALJ committed harmful error by failing to discuss his hearing testimony regarding his psychiatric symptoms, specifically as to his severe anxiety, panic disorder, and resulting shortness of breath and corresponding non-conservative treatment and medications. (Doc. 24 at 11-12). He states that the ALJ only made "one mention to psychological objective evidence of record in order to discount" his testimony on his ability to

1 concentrate and complete tasks, and the ALJ mischaracterized the report by failing to address its
2 findings as a whole. *Id.* at 13. He argues that the issue is not whether he could complete tasks on
3 a “good day,” but rather his ability to focus, concentrate, and “simply function” in a normal work
4 environment on a sustained basis. *Id.* at 14. He further argues that the ALJ’s references to Dr.
5 Wagner’s findings of an ability to bend are not clear and convincing reasons to reject Plaintiff’s
6 physical symptom evidence. He notes the ALJ’s “failure to discuss” his “extensive testimony”
7 regarding severe diabetic neuropathy and resulting limitations on his daily activities. *Id.* at 16-17.
8 Finally, he argues that the ALJ failed to address how an individual with his limitations, as
9 testified to, could sustain “medium” work in a normal work environment, particularly as the
10 record evidences only a one-time ability to “bend” and one-time ability to “concentrate.” *Id.* at
11 18.

12 Defendant asserts that the ALJ provided multiple reasons for discounting Plaintiff’s
13 symptom testimony, such as “unremarkable clinical signs upon examination,” “inconsistent
14 statements” as in his adult function report, daily activities that showed he could care for his own
15 needs independently, positive response to medication when compliant, and opinions of record
16 stating he could perform a wide array of mental and physical work. (Doc. 26 at 13-14).
17 Defendant states the ALJ did address Plaintiff’s psychiatric symptomology by incorporating it
18 into the RFC. *Id.* at 14-15. Defendant provides that the “record contained ample support for the
19 ALJ’s reasonable conclusions,” discussing first Plaintiff’s physical conditions. *Id.* at 15-18.
20 Defendant addressed the ALJ’s findings concerning Plaintiff’s mental conditions, stating that just
21 as with Plaintiff’s physical allegations, he cites to “relatively few, isolated incidents” without
22 distinguishing between his subjective complaints and the objective clinical signs. Defendant
23 provides that Plaintiff’s examinations were unremarkable while he was compliant with his
24 medication, and includes a footnote citing record evidence that discusses Plaintiff’s
25 noncompliance. *Id.* at 18-19. Defendant argues that Plaintiff’s “citation to isolated incidents”
26 cannot meet his burden in light of documentation of consistent “normal physical and mental
27 clinical findings.” *Id.* at 19.

28 An ALJ’s reasons for rejecting a claimant’s subjective symptom statements must be

specific, clear, and convincing. General findings regarding a claimant's credibility are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints. The ALJ's findings must be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and did not arbitrarily discredit a claimant's testimony regarding pain. A reviewing court should not be forced to speculate as to the grounds for an adjudicator's rejection of a claimant's allegations of disabling pain. As such, an implicit finding that a plaintiff's testimony is not credible is insufficient. *Christine G. v. Saul*, 402 F. Supp. 3d 913, 921-22 (C.D. Cal. 2019) (citations and quotations omitted). The standard is "not an easy requirement to meet: The clear and convincing standard is the most demanding required in Social Security cases." *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

1. Psychological Symptomology

First, the Court will turn to the psychological symptomology at issue. During the hearing, Plaintiff testified regarding his psychological symptoms. Plaintiff stated he has panic attacks "quite frequently ... at least once a month ... if not more." (AR 101). He stated that they can last for "up to six days," and had previously made him "[feel] like he was going to die." (AR 102). He stated he takes bupropion daily. He mentions he was prescribed lorazepam but does not take it daily, as it is a narcotic and he does not "want to get hooked up on that." (AR 102). He stated he gets "confused, forgetful, and once I start panicking, I lose control. I'm no longer in control of myself." He provided that this has been occurring for years. (AR 103). He stated anxiety attacks occur at random and he will "wake up in a panic, like [he] was being buried alive" and that he cannot breathe and gets "so tense that [he] just [wants] to scream." He stated it can occur in public due to crowds and noise. (AR 104). He provided that, always during the beginning of an attack, he will "start throwing things, hitting walls" and that he cannot control himself. (AR 105).

Regarding concentration issues, Plaintiff stated that he can concentrate for "30 minutes at most" before his mind starts wandering and, on worse days, he cannot sit still. He testified that he sometimes has to lie down and rest during daytime hours, as he has trouble sleeping. He provided that if he added all the time up in a day where he had to lie down due to "pain, fatigue, or other

1 mental health issues,” the total would be “[p]robably at least four hours, five hours.” AR 108-
2 109).

3 An ALJ’s failure to properly consider Plaintiff’s subjective symptom testimony may
4 independently be reversible error. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 489 (9th Cir.
5 2015) (finding that an ALJ’s failure to identify and explain why a claimant’s subjective testimony
6 is not credible constitutes reversible error because the reviewing court cannot determine if the
7 ALJ’s decision was supported by substantial evidence). Before the ALJ discredits a claimant’s
8 subjective symptom testimony, they must first determine if objective medical evidence of an
9 underlying impairment “could reasonably be expected to produce the pain or other symptoms
10 alleged.” *Trevizo*, 871 F.3d at 678. The ALJ found this was the case. (AR 27). The second step
11 is for the ALJ to describe specific, clear, and convincing reasons to reject the claimant’s
12 testimony on the severity of his symptoms. *Trevizo*, 871 F.3d at 678.

13 Indeed, accounts of Plaintiff’s psychological conditions, and corresponding prescribed
14 medications, exist throughout the record. (AR 562, 567, 569, 638, 640-644, 652-653, 656-658,
15 683-684, 690-691, 725, 737-738, 740, 751, 776, 779, 816, 850, 885, 901, 926, 930, 970, 972, 998,
16 1003, 1074). That, along with his testimony during the hearing regarding his symptoms (AR 101-
17 109), establishes for the ALJ a duty to discuss Plaintiff’s impairments and resulting subjective
18 symptom testimony and, if the ALJ finds such testimony should be rejected, the ALJ must
19 describe his reasons with specificity under the relevant clear and convincing standard. *See*
20 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir.2006) (“[U]nless an ALJ makes a finding
21 of malingering based on affirmative evidence thereof, he or she may only find an applicant not
22 credible by making specific findings as to credibility and stating clear and convincing reasons for
23 each.”)

24 While the Court may be able to draw inferences about what testimony may be
25 inconsistent, the ALJ must identify those inconsistencies with specificity. *Lambert v. Saul*, 980
26 F.3d 1266, 1278 (9th Cir. 2020) (citing *Brown-Hunter*, 806 F.3d at 494) (“Although the
27 inconsistencies identified by the district court could be reasonable inferences drawn from the
28 ALJ’s summary of the evidence, the credibility determination is exclusively the ALJ’s to make,”

1 and the reviewing court is “constrained to review the reasons the ALJ asserts.”).

2 Plaintiff argues that “there is no discussion or even a basic summary of [Plaintiff’s]
3 hearing testimony regarding his psychiatric symptomology testimony at issue” except for
4 citations to a function report and a general citation to the hearing testimony regarding his “ability
5 to concentrate” and “ability to complete tasks” being “affected.” (Doc. 24 at 11, citing AR 27-
6 28).

7 As to this, Plaintiff is correct. The ALJ did not make any specific findings as to the
8 credibility of Plaintiff’s symptom testimony and its severity. Defendant argues that the ALJ did
9 in fact consider Plaintiff’s symptom testimony by incorporating it into the “paragraph B” mental
10 limitations analysis. (Doc. 26 at 14-15). Defendant cites to case law for the proposition that the
11 ALJ need only discuss and evaluate evidence to support his conclusion, not do so under a specific
12 heading, and that the ALJ need not discuss every piece of evidence. These arguments are
13 unpersuasive. As noted above, the ALJ was required to reject Plaintiff’s symptom testimony with
14 clear and convincing reasons. The ALJ did not make any mention of Plaintiff’s testimony
15 regarding potentially random, multi-day panic attacks and resulting panic and loss of control, his
16 trouble sleeping, his inability to sit still at times, and his need to lie down at other times. It
17 follows that, having not even mentioned this testimony, the ALJ did not meet the applicable
18 standard when rejecting this testimony. *See Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)
19 (“The ALJ must state specifically which symptom testimony is not credible and what facts in the
20 record lead to that conclusion.”).

21 Further, the reasons proffered by the ALJ are themselves insufficient. It appears the
22 primary reasons the ALJ offers to rebut Plaintiff’s credibility and reject his testimony are that (1)
23 one medical record from February 19, 2020, indicated his condition was stable with medication
24 (AR 26, citing AR 1019), (2) a March 2015 medical record showed Plaintiff was alert and
25 cooperative, with normal mood and affect (AR 26, citing AR 561), (3) an October 17, 2019,
26 medical record showed Plaintiff was awake, alert and cooperative, with normal mood and affect
27 and age appropriate mental status (AR 26, citing AR 859), (4) a November 15, 2019, medical
28 record showed Plaintiff had adequate concentration, persistence, pace, thought content, and

1 memory (AR 26, citing AR 739), and (5) a function report completed by Plaintiff evidenced
2 activities of daily living (AR 429-437).

3 The ALJ cites only a few examples of instances of improvement or stability, over a period
4 of years of treatment, to reject claimant's symptomology. *Garrison v. Colvin*, 759 F.3d 995, 1017
5 (9th Cir. 2014) ("As we have emphasized while discussing mental health issues, it is error to
6 reject a claimant's testimony merely because symptoms wax and wane in the course of treatment.
7 Cycles of improvement and debilitating symptoms are a common occurrence, and in such
8 circumstances it is error for an ALJ to pick out a few isolated instances of improvement over a
9 period of months or years and to treat them as a basis for concluding a claimant is capable of
10 working.").

11 Defendant argues that Plaintiff cites to only "relatively, few isolated incidents of positive
12 mental clinical signs documented over the eight-and-a-half-year period" in support of his mental
13 symptom allegations, without distinguishing between his subjective complaints and the
14 documented objective clinical signs. However, on this point, the ALJ's analysis is insufficiently
15 specific to satisfy the relevant clear and convincing standard. *See Wheeler v. Berryhill*, No. 3:16-
16 CV-01623-AA, 2017 WL 3478483, at *4 (D. Or. Aug. 11, 2017) ("it is not possible to evaluate
17 whether [merely conservative] treatments conflict with plaintiff's allegations about the severity of
18 his symptoms because the ALJ never specified which symptom statements conflict with
19 plaintiff's course of treatment."). The ALJ never discussed whether the Plaintiff's course of
20 treatment was "conservative" or otherwise evidenced any patterns of clinical signs. As such, the
21 record is undeveloped as to these arguments. A court can "review only the reasons provided by
22 the ALJ in the disability determination and may not affirm the ALJ on a ground upon which he
23 did not rely." *Garrison*, 759 F.3d at 1010.³

24 Defendant argues that Plaintiff's examinations were unremarkable while he was compliant
25

26 ³ Following *Garrison*, the Court declines to consider Defendant's post hoc rationalization of the
27 ALJ's rejection of Plaintiff's symptomology testimony (Doc. 26 at 20-21) because the argument is based
28 on purported inconsistencies that the ALJ did not rely upon. *Accord Bray v. Comm'r of Soc. Sec. Admin.*,
554 F.3d 1219, 1225-26 (9th Cir. 2009) (courts must "review the ALJ's decision based on the reasoning
and factual findings offered by the ALJ – not post hoc rationalizations that attempt to intuit what the
adjudicator may have been thinking.").

1 with his medication, and, in a footnote, cites record evidence that discusses Plaintiff's
2 noncompliance. (Doc. 26 at 18-19). As noted above, here again the ALJ did not elaborate as
3 such in her decision and thus the record is undeveloped as to these arguments. *Garrison, supra*,
4 759 F.3d at 1010. However, even assuming *arguendo* the ALJ had made such findings, the
5 record seems to evidence possible relevant mitigating factors. For example, the February 19,
6 2020, medical record evidences a follow-up clinical visit by Plaintiff to Sequoia Health and
7 Wellness Centers in Visalia, California. The physicians note that Plaintiff had gone to the
8 emergency room multiple times over the preceding months for increased anxiety, after his
9 Wellbutrin prescription dosage increased on November 15, 2019, from 300 to 450 milligrams.
10 Plaintiff reported that he then had difficulties "with insurance getting approval of the dosage" and
11 so he was not taking the medication consistently or at all for a "couple of weeks towards the end
12 of January." (AR 1019). Similarly, during the hearing, Plaintiff mentions not taking lorazepam
13 as it is a narcotic and he worried about possible addiction. (AR 102).

14 Although an "unexplained or inadequately explained failure" to seek treatment or follow
15 prescribed treatment can be a valid reason to discount a claimant's testimony, the ALJ is required
16 to consider plaintiff's reasons for not taking medications. *Trevizo*, 871 F.3d at 679-80; *see Stuter*
17 *v. Astrue*, No. CIV S-08-0129 DAD, 2009 WL 2824740, at *5 (E.D. Cal. Sept. 1, 2009) ("Where
18 a claimant provides evidence of a good reason for not taking medication for her symptoms, her
19 symptom testimony cannot be rejected for not doing so."). The ALJ did not consider the
20 Plaintiff's asserted reasons for not taking medications.

21 In sum, the ALJ did not meet the relevant clear and convincing standard in rejecting
22 Plaintiff's psychological symptomology where the record shows consistent diagnosis of
23 depression and anxiety, with multiple medications prescribed, over the course of many years and
24 the ALJ failed to appropriately discuss Plaintiff's testimony. *See Garrison*, 759 F.3d at 1018
25 ("Rather than describe Garrison's symptoms, course of treatment, and bouts of remission, and
26 thereby chart a course of improvement, the ALJ improperly singled out a few periods of
27 temporary well-being from a sustained period of impairment and relied on those instances to
28 discredit Garrison. While ALJs obviously must rely on examples to show why they do not

1 believe that a claimant is credible, the data points they choose must in fact constitute examples of
2 a broader development to satisfy the applicable ‘clear and convincing’ standard.”).

3 **2. Physical Symptomology**

4 Turning to the physical symptomology at issue, Plaintiff testified that he can stand for
5 “[a]pproximately 15, 20 minutes” at a time before he starts feeling lower back pain which then
6 continues down his legs to his feet. (AR 105-106). He testified that he can walk approximately
7 four blocks before he needs to stop and take a break. (AR 106). He can tolerate sitting down for
8 20 minutes before he has to stand. (AR 106-107). He testified his back pain is there “all the
9 time” from 2017 onwards, at a severity of “about a six” on a scale of one to ten. He stated lifting
10 his legs and walking on uneven road, such as “stepping up and down on sidewalks,” aggravated
11 the pain. (AR 108).

12 After discussing Plaintiff’s physical impairments as evidenced in the record, the ALJ
13 found that Plaintiff’s “medically determinable impairments could reasonably be expected to cause
14 the alleged symptoms.” (AR 27). As noted in section one above, that, along with his testimony
15 during the hearing regarding his symptoms (AR 101-109), establishes for the ALJ a duty to
16 discuss Plaintiff’s impairments and resulting subjective symptom testimony and, if the ALJ finds
17 such testimony should be rejected, the ALJ must describe his reasons with specificity under the
18 relevant clear and convincing standard. *See Robbins, supra*, 466 F.3d at 883.

19 Plaintiff argues that the ALJ failed to discuss physical symptomology testimony offered
20 during the hearing and, further, failed to discuss the documented evidence of record supporting
21 his testimony regarding his “less than sedentary physical limitations caused by his neuropathy.”
22 (Doc. 24 at 16-17). Plaintiff argues that “the ALJ’s one reference to [his] ability to bend down
23 and take off his shoes during a one-time consultative examination” fails to meet the clear and
24 convincing standard. *Id.* at 17.

25 The Court agrees with Plaintiff. In his decision, the ALJ did not make any specific
26 findings as to the credibility of Plaintiff’s symptom testimony and its severity. Defendant argues
27 that “the record contained ample support for the ALJ’s reasonable conclusions.” (Doc. 26 at 17).
28 Defendant provides that “[h]ere, where the ALJ’s factual findings are supported by substantial

evidence and free of legal error, the Court should affirm.” *Id.* at 19.

These arguments are unpersuasive. As noted above, the ALJ was required to reject Plaintiff’s symptom testimony with clear and convincing reasons. The ALJ did not make any mention of Plaintiff’s physical symptomology, except for his ability to bend. It follows that, having not even mentioned the hearing testimony or other sources of symptomology, the ALJ did not meet the applicable standard when rejecting this testimony. *See Smolen, supra*, 80 F.3d at 1284.

3. Daily Activities

The ALJ was permitted to consider daily living activities in his credibility analysis. The Ninth Circuit has explained that “if a claimant engages in numerous daily activities involving skills that could be transferred to the workplace, the ALJ may discredit the claimant’s allegations upon making specific findings relating to those activities.” *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005); *see Morgan v. Apfel*, 169 F.3d 595, 600 (9th Cir. 1999) (finding that claimant’s ability to fix meals, do laundry, work in the yard, and occasionally care for his friend’s child was evidence of claimant’s ability to work). Daily activities may be grounds for an adverse credibility finding if a claimant is able to spend a substantial part of his day engaged in pursuits involving capacities that are transferable to a work setting. *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 404.1502(a). When discounting a claimant’s daily activities, an ALJ must explain “*which* daily activities conflicted with *which* part of [c]laimant’s testimony.” *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (emphasis in original).

Though inconsistent daily activities may provide a justification for rejecting symptom testimony, “the mere fact that a plaintiff has carried on certain daily activities ... does not in any way detract from her credibility as to her overall disability.” *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir. 2004) (alteration in original) (quoting *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001)). A claimant “does not need to be ‘utterly incapacitated’ in order to be disabled.” *Id.* (quoting *Vertigan*, 260 F.3d at 1050).

Plaintiff argues that the “record does not indicate that Plaintiff could—or did—perform

1 any of the activities identified for a substantial part of each day. Thus, the activities identified by
2 the ALJ do not support the adverse credibility decision [referring to a ‘one time ability to bend’
3 and ‘one time ability to adequately concentrate’].” Plaintiff cites case law for the proposition that
4 home activities are not easily transferable to the workplace environment. (Doc. 24 at 18).

5 Defendant argues that the ALJ noted Plaintiff does not need assistance bathing, dressing,
6 and grooming, and has adequate motivation to complete these tasks. Defendant cites case law for
7 the proposition that everyday activities, even if they suggest some difficulty functioning, may be
8 grounds for discrediting Plaintiff’s testimony to the extent they contradict claims of a totally
9 debilitating impairment. Defendant also cites to the record for additional activities Plaintiff had
10 completed at times, noting the ALJ did not mention them and citing case law for the proposition
11 that, even if the Court may not affirm the ALJ’s decision on grounds not set forth within it, the
12 Court may consider such evidence if it was available to the ALJ and supports the ALJ’s stated
13 grounds for the decision. (Doc. 26 at 21-22).

14 The ALJ discusses Plaintiff’s activities of daily living in two instances: when discussing
15 the “paragraph B” and “paragraph C” criteria relating to Plaintiff’s mental impairments (AR 23)
16 and when referencing a function report regarding his ability to bend and to complete tasks (AR
17 27). He cites to a consultative exam by physician Roger Wagner and a mental evaluation by
18 psychologist Lance A. Portnoff for the conclusion that Plaintiff can engage in activities of daily
19 living, namely “bathing, dressing, and grooming” with “adequate motivation” and shopping,
20 cooking, cleaning, and performing “activities of daily living without assistance.” (AR 23, citing
21 AR 725, 739). However, on the same page and in the same section as that cited by the ALJ, the
22 mental evaluation of Dr. Portnoff also includes the statement “He cannot travel alone and cannot
23 manage money ... He describes a typical day as mainly staying at home. He naps much of the
24 time due to Seroquel-related fatigue and drowsiness.” (AR 739). The ALJ did not mention or
25 discuss this in his decision.

26 As to Plaintiff’s function report, the ALJ notes that Plaintiff states his ability to complete
27 tasks is affected (citing AR 434) but “that is internally inconsistent with his subsequent report that
28 he finishes what he starts” (citing AR 434). (AR 27). However, this appears to be a misstatement

1 of the record. Plaintiff does check the box for “Yes” next to the question “Do you finish what
2 you start? (For example: a conversation, chores, reading, watching a movie).” Importantly,
3 however, immediately beside the question he writes “Sometimes.” (AR 434). The ALJ did not
4 mention or discuss this clarification in his decision. Additionally, Plaintiff also outlined other
5 symptom testimony in the function report that the ALJ did not clearly address, for example
6 dizziness, hand cramps, “blurred vision,” forgetfulness, blood pressure spikes due to stress,
7 changes in routine causing confusion and panic attacks, among others. *See* (AR 429-437).
8 Plaintiff mentions being able to “walk for 15-20 minutes” before needing to rest (AR 434), which
9 appears to corroborate testimony he provided during the hearing (AR 106).

10 The ALJ appears to have selectively cited information helpful to his decision while
11 ignoring information that appears to have gone against his conclusions, even when such
12 information lived right beside the facts cited. It follows that the ALJ failed to adequately, and
13 accurately, address Plaintiff’s activities of daily living and how they related to relevant symptom
14 testimony. *See Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017) (finding that the ALJ failed
15 to meet the “high bar for rejecting a claimant’s symptom testimony,” holding that “[the ALJ]
16 failed to acknowledge that, over and over in the same [function] report, Revels explained that she
17 could complete only some of the tasks in a single day and regularly needed to take breaks—which
18 was consistent with her symptom testimony.”).

19 **B. Whether the ALJ Failed to Support the Mental RFC with Substantial Evidence**

20 Separately, Plaintiff asserts that the mental RFC is not supported by substantial evidence.
21 He argues that the ALJ did not specifically reject any of Dr. Portnoff’s concrete limitations, most
22 notably the “moderate” limitations found regarding Plaintiff’s ability to complete a normal
23 workday or week without interruption from a psychiatric condition and the “moderate”
24 limitations in his ability to deal with the stress encountered in a competitive work environment.
25 Plaintiff states that this indicates the ALJ believes Dr. Portnoff’s examination findings are
26 “consistent with the MRFC opinion, absent any discussion to the contrary indicating the ALJ was
27 rejecting any of Dr. Portnoff’s MRFC limitations.” Plaintiff argues that the mental RFC
28 limitation of “routine work related [sic] decision making with occasional contact with coworkers

1 and the public” does not reflect these limitations, thus constituting harmful error. (Doc. 24 at 19,
2 citing AR 26).

3 Defendant argues the ALJ was not required to include any mental functional limitations in
4 the RFC and that the ALJ’s RFC limitation was “reasonably attributed” to Dr. Portnoff’s assessed
5 moderate limitations. (Doc. 26 at 28). Defendant cites case law for the proposition that the Court
6 must uphold the ALJ’s reasoning if the “path may be reasonably discerned,” even if explained
7 “with less than ideal clarity.” *Id.* at 29.

8 “Where an ALJ accords substantial or great weight to a physician’s opinion, he must
9 either incorporate their findings into the RFC or offer an explanation for why he chose not to
10 accept them.” *Sahyoun v. Saul*, No. 2:18-CV-576-EFB, 2020 WL 1492661, at *3 (E.D. Cal. Mar.
11 27, 2020), citing *Martin v. Comm’r of Social Sec. Admin.*, 472 Fed. Appx. 580 (9th Cir. 2012)
12 (“The administrative law judge (ALJ) erred when formulating Martin’s residual functional
13 capacity (RFC) because the RFC neither incorporated Dr. Steiner’s opinion of Martin’s work
14 limitations nor gave specific and legitimate reasons for rejecting it.”), and *Neufeld v. Berryhill*,
15 No. 2:16-cv-03644 (VEB), 2018 WL 4739699, at *6, (C.D. Cal. Sept. 30, 2018) (“Having
16 afforded ‘great weight’ to the opinions of Dr. Bartell and Dr. Loomis, the ALJ was bound to
17 either incorporate their findings as to Plaintiff’s limitations or explain why she decided not to
18 accept them.”)); *see Flores v. Saul*, No. 1:18-cv-01523-SKO, 2020 WL 509098, at *5 (E.D. Cal.
19 Jan. 31, 2020) (finding ALJ erred in giving “great weight” to consultative psychologist’s opinion
20 but failing to outline “specific and legitimate reasons” for “implicitly rejecting significant
21 portions” of the opinion).

22 Here, the ALJ gave Dr. Portnoff’s opinion “significant weight.” (AR 26). Dr. Portnoff
23 found the following limitations: “mild to moderate limitations in [Plaintiff’s] ability to accept
24 instructions from supervisors,” “mild to moderate limitations in his ability to interact with
25 coworkers and the public due to MDD/PTSD/OCD,” “moderate limitations in his ability to
26 complete a normal workday or workweek without interruptions from a psychiatric condition,” and
27 moderate limitation in “ability to deal with stress encountered in a competitive work
28 environment.” (AR 741). In the RFC, the ALJ included the following: “[Plaintiff] is limited to

1 only routine work related [sic] decision making with occasional contact with coworkers and the
2 public.” (AR 24).

3 Recent decisions in courts within the Ninth Circuit have held that “routine work” and
4 “occasional contact” restrictions are insufficient to account for moderate limitations in completing
5 a normal workday or workweek. *See Flores, supra*, 2020 WL 509098, at *5 (finding limitation to
6 “simple repetitive tasks with occasional public contact” failed to accommodate moderate
7 difficulties in completing a normal workweek without interruption from psychiatric symptoms as
8 identified by consultative psychologist); *Christopher G. v. Saul*, No. 2:19-CV-06150-AFM, 2020
9 WL 2079972, at *6 (C.D. Cal. Apr. 30, 2020) (finding RFC to perform work involving simple,
10 routine tasks with limited public and coworker interaction failed to address moderate limitations
11 in performing activities within a schedule, maintaining regular attendance, being punctual within
12 customary tolerances, completing a normal workday or workweek, or performing at a consistent
13 pace without an unreasonable number and length of rest periods).

14 The ALJ failed to account for the limitations outlined in Dr. Portnoff’s opinion, despite
15 giving it “significant weight,” and did not provide any explanation for doing so. As such, the
16 ALJ’s mental RFC determination is not supported by substantial evidence. *See Wiles v. Berryhill*,
17 No. 2:16-CV-09558-GJS, 2017 WL 5186333, at *3 (C.D. Cal. Nov. 8, 2017) (holding that
18 although moderate limitations in different areas of functioning, such as in the ability to maintain
19 regular attendance or to complete a normal workday or workweek, are not on their face disabling,
20 the ALJ’s RFC assessment was not supported by substantial evidence without including the
21 limitations or, otherwise, offering specific reasons for rejecting the findings).

22 * * * * *

23 In sum, the ALJ has failed to meet the requirement to articulate clear and convincing
24 reasons to reject the Plaintiff’s testimony regarding his psychological and physical symptoms and
25 failed to provide substantial evidence for not including Dr. Portnoff’s limitations in the RFC.

26 The decision whether to remand for further proceedings or simply to award benefits is
27 within the discretion of the Court. *See Salvador v. Sullivan*, 917 F.2d 13, 15 (9th Cir. 1990).
28 Remand for further proceedings is warranted where additional administrative proceedings could

1 remedy defects in the decision. *See Kail v. Heckler*, 722 F.2d 1496, 1497 (9th Cir. 1984).
2 Remand for the payment of benefits is appropriate where no useful purpose would be served by
3 further administrative proceedings (*Kornock v. Harris*, 648 F.2d 525, 527 (9th Cir. 1980)); where
4 the record has been fully developed (*Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986));
5 or where remand would unnecessarily delay the receipt of benefits to which the disabled Plaintiff
6 is entitled (*Bilby v. Schweiker*, 762 F.2d 716, 719 (9th Cir. 1985)).

7 Here, Plaintiff seeks an order from the Court remanding this case for further
8 administrative proceedings (Doc. 24 at 20), and the Commissioner argues that the Court should
9 affirm the ALJ's decision finding Plaintiff not disabled (Doc. 26 at 29). The Court concludes that
10 remand for further proceedings is warranted because additional administrative proceedings may
11 remedy the deficiencies in the ALJ's decision noted herein.

12 C. CONCLUSION

13 For the reasons set for above, the Court finds the ALJ erred in evaluating opinions in the
14 record and failed to apply the proper legal standards. Accordingly, IT IS HEREBY ORDERED
15 that:

- 16 1. Plaintiff's motion for summary judgment (Doc. 24) is **GRANTED**.
- 17 2. Defendant's cross-motion for summary judgment (Doc. 26) is **DENIED**.
- 18 3. This matter is **REMANDED** pursuant to sentence four of 42 U.S.C. §405(g) for further
19 proceedings consistent with this decision.
- 20 4. The Clerk of the Court is **DIRECTED** to enter judgment in favor of Plaintiff David
21 Torrez and against Defendant Commissioner of Social Security.

22 IT IS SO ORDERED.

23 Dated: January 23, 2025

24 
25 UNITED STATES MAGISTRATE JUDGE
26
27
28